

SENATE BILL REPORT

SB 5129

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 26, 2007

Title: An act relating to unlawfully hunting while upon the property of another.

Brief Description: Creating the crime of unlawfully hunting upon the property of another.

Sponsors: Senators Jacobsen and Shin.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/31/07, 2/26/07 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: That Substitute Senate Bill No. 5129 be substituted therefor, and the substitute bill do pass.

Signed by Senators Jacobsen, Chair; Rockefeller, Vice Chair; Hargrove, Poulsen and Spanel.

Minority Report: Do not pass.

Signed by Senator Morton, Ranking Minority Member.

Minority Report: That it be referred without recommendation.

Signed by Senator Stevens.

Staff: Kim Johnson (786-7346)

Background: Criminal trespass is committed when a person knowingly enters or remains unlawfully in a building or upon the premises of another. If the premises is not a building, the crime is a misdemeanor. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land, or unless notice is given by posting in a conspicuous manner. A field fenced in any manner is not unimproved and apparently unused land. The Department of Fish and Wildlife (DFW) law enforcement officers are currently able to cite trespassing hunters for a misdemeanor. Under current law, misdemeanors are punishable by not more than 90 days in jail, a fine of \$1,000, or both.

The unlawful killing of specific wildlife results in a criminal wildlife penalty assessment by the species. Criminal wildlife penalty assessments are deposited into the Fish and Wildlife

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Enforcement Reward Account, and may only be used for investigation and prosecution of offenses, to provide rewards for informants, and other valid enforcement uses. If a hunter is assessed a criminal wildlife penalty assessment, the hunter's license is revoked and suspended until the assessment is paid.

DFW officers have the authority to seize fish, wildlife, and shellfish without a warrant if the officer has probable cause to believe the fish or wildlife has been taken, transported, or possessed in violation of Title 77 or regulation of the DFW.

Summary of Bill: The crime of unlawfully hunting upon the property of another is created under Title 77. A person is guilty of unlawfully hunting upon the property of another, a misdemeanor, when the person knowingly enters or remains unlawfully in or upon premises of another for the purposes of hunting for wild animals or wild birds.

The phrase "enters or remains unlawfully" is defined as a person who is not licensed, invited, or otherwise privileged to enter or remain.

A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land, or unless notice is given by posting in a conspicuous manner. A field fenced in any manner is not unimproved and apparently unused land.

If a hunter is found guilty of hunting while criminally trespassing, the DFW may revoke the hunter's licenses and tags and suspend their hunting privileges for two years. In addition, the hunter must pay a criminal wildlife penalty assessment according to the species killed. Each animal killed in violation of this law is a separate offense.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Natural Resources, Ocean & Recreation): Fish and wildlife officers are authorized to seize wildlife, fish, and shellfish that a fish and wildlife officer has probable cause to believe was taken, transported, or possessed while committing the crime of criminal trespass in the second degree.

All other provisions of the original bill are removed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We brought this bill in response to property owners' concerns of people who illegally enter their property in pursuit of big game animals. We cannot create a crime by rule of the commission. We do not have the authority to seize a weapon or animal because trespassing is not a crime under the laws governing the department. Our seizure authority is limited to crimes that are found under the laws governing the department. We support this bill as a work in progress.

We support the concept of this bill. We would like to see the penalty assessment go to the landowner to compensate them. Hot pursuit is an issue that should be addressed to make sure the officers have the discretion to recognize a hunter who is trying to be responsible and not leave an injured or dead animal to waste.

CON: Our concern is that it singles out timber land owners for a heavier burden to prevent trespass. We could be supportive if it was worded to require a person to obtain permission or if there is notice posted authorizing persons to hunt. State should be cautious not to use this measure as a way to close the tribes out of usual and accustom hunting rights.

Persons Testifying: PRO: Bruce Bjork, Department of Fish and Wildlife; Ed Owens, Hunter's Heritage Council; Jack Field, Washington Cattleman's Association.

CON: Debora Munguia, Washington Forest Protection Agency; Steve Robinson, Northwest Indian Fisheries Commission.